

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

TP 27,452-27,454

In re: 906 Gallatin Street, N.W.

Ward Four (4)

DAVID NUYEN

Housing Provider/Appellant

v.

SABINO DE GUZMAN, et. al.¹

Tenants/Appellees

ORDER ON MOTION TO DISMISS CASE

August 8, 2008

YOUNG, CHAIRMAN. This case is on appeal from the District of Columbia Department of Consumer and Regulatory Affairs (DCRA), Rental Accommodations and Conversion Division (RACD), to the Rental Housing Commission (Commission). The applicable provisions of the Rental Housing Act of 1985 (Act), D.C. OFFICIAL CODE §§ 42-3501.01-3509.07 (2001), the District of Columbia Administrative Procedure Act (DCAPA), D.C. OFFICIAL CODE §§ 2-501-510 (2001), and the District of Columbia Municipal Regulations (DCMR), 14 DCMR §§ 3800-4399 (2004) govern these proceedings.

I. THE PROCEDURES

The Commission issued a decision and order in this case on May 9, 2008. The Commission affirmed, in part, and remanded, in part the Rent Administrator's decision in De Guzman v. Nuyen, TP 27,452-27,454 (RACD June 14, 2004). The Commission

¹ The Rent Administrator, pursuant to 14 DCMR § 3909 (2004), consolidated for review the tenant's petition, TP 27,452, with TP 27,453 and TP 27,454.

decision affirmed the Rent Administrator's decision which granted rent refunds to each of the tenant's in the consolidated petitions. However, the Commission remanded the decision for a recalculation of the amounts of refunds and interest on the refunds due the tenants from the housing provider. Nuyen v. De Guzman, TP 27,452-27,454 (RHC May 9, 2008).

On May 30, 2008, the housing provider, David Nuyen, filed in the Commission a document titled, "Motion to Dismiss the Case." The document states in part, "Housing Provider/Respondent DAVID NUYEN respectfully moves the ... Rental Housing Commission to scrap the DECISION AND ORDER dated May 9, 2008 against him brought by Sabino DeGuzman, Sandra Reyes, and Claudia Payes." The housing provider states that this matter is now in the Landlord-Tenant Branch of the Superior Court of the District of Columbia. The motion further states:

1. There was a settlement in 2005 at a mediation ordered by the Landlord and Tenant Court between David Nuyen as a Landlord and Sabino Guzman as a Tenant in the L&T 03-10355 which followed this Petition.
2. There was also an Order from Judge Gerald I. Fisher in the Civil Court number 05 CA 5439 in which the Court has set the rent amount for each tenant in the lawsuit beginning April 1, 2006 and continuing until the [sic] of this lawsuit Order of this Court.

Motion at 1. No opposition to the Motion was received in the Commission.

II. THE LAW

Pursuant to the Commission's rule, 14 DCMR § 3824 (2004), an appellant may file a motion to withdraw an appeal pending before the Commission, § 3824.1, and the Commission shall review all motions to withdraw to ensure that the interests of all parties are protected, § 3824.2. See Williams v. Donald Lipscomb Realty Corp., TP 27,867

(RHC July 2, 2004); Jefferson v. Hercules Real Estate, Inc., TP 27,478 (RHC Jan. 21, 2003); Harrison v. Fred A. Smith, TP 25,059 (RHC July 13, 2001).

III. THE ANALYSIS

In the instant case, the housing provider/Appellant seeks dismissal of a case originally filed by tenants Sabino DeGuzman, Sandra Reyes, and Claudia Payes. The housing provider's argument is that this matter is currently in the Landlord-Tenant Branch of the Superior Court of the District of Columbia. In its decision the Rent Administrator issued refunds for the tenant based on findings that the housing provider both reduced services and facilities and overcharged rents. The District of Columbia Court of Appeals has stated that both RACD and the Landlord and Tenant Court have concurrent jurisdiction over claims related to reduction of services and facilities, which can be proved by showing violations of the housing code. See Robinson v. Edwin B. Feldman Co., 514 A.2d 799 (D.C. 1986).

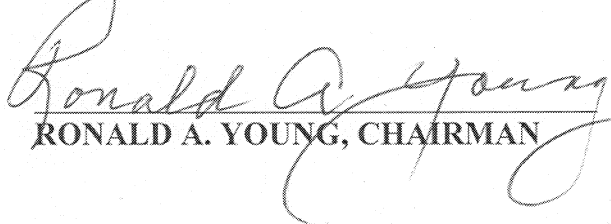
We observed in Drayton (citation omitted) that '[u]nder the doctrine of primary jurisdiction, when a claim is originally cognizable in the courts but requires resolution of an issue within the special competence of an administrative agency, the party must first resort to the agency before he or she may sue for an adjudication.' (citation omitted). We went on to note the complexity of rent increase proceedings, to reaffirm our holding (citation omitted) that the Rent Administrator and ...Commission have primary jurisdiction over such proceedings, and to hold that the trial judge erred in undertaking to determine the validity of rent increases. (footnote omitted). (emphasis added).

Id. at 800. In the instant case, the tenants alleged that the housing provider subjected them to rent overcharges which are in the exclusive jurisdiction of the Rent Administrator and the Commission.

IV. CONCLUSION

Accordingly, the housing provider's assertion that these consolidated cases should be dismissed because they are before the Superior Court of the District of Columbia is DENIED.

SO ORDERED.


RONALD A. YOUNG, CHAIRMAN

MOTIONS FOR RECONSIDERATION

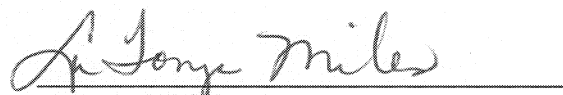
Pursuant to 14 DCMR § 3823 (2004), final decisions of the Commission are subject to reconsideration or modification. The Commission's rule, 14 DCMR § 3823.1 (2004), provides, "[a]ny party adversely affected by a decision of the Commission issued to dispose of the appeal may file a motion for reconsideration or modification with the Commission within ten (10) days of receipt of the decision."

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO DISMISS CASE** in TP 27,452-27,454 was mailed postage prepaid by priority mail, with delivery confirmation on this **8th day of August, 2008** to:

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